



JAMES A. NOYES, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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IN REPLY PLEASE

REFER TO FILE: **MP-6**
148.042

April 1, 2004

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

PACOIMA DIVERSION - PARCEL 35 - USE AGREEMENT
CITY OF LOS ANGELES
SUPERVISORIAL DISTRICT 3
3 VOTES

**IT IS RECOMMENDED THAT YOUR BOARD ACTING AS THE GOVERNING BODY
OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT:**

1. Find this transaction categorically exempt from the provisions of the California Environmental Quality Act (CEQA).
2. Approve the 25-year Use Agreement which is substantially in the same form as enclosed herein, between the Los Angeles County Flood Control District (District) and the City of Los Angeles (City), for recreational purposes within Pacoima Diversion, Parcel 35, located at the northeast corner of Arleta Avenue and Paxton Street, in the City of Los Angeles. There will be no monetary consideration for this Use Agreement.
3. Instruct the Chairman to sign the Use Agreement, upon presentation by Public Works.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

This action will allow the District to enter into an agreement with the City for use of a portion of Pacoima Diversion, Parcel 35, for recreational purposes. Parcel 35 is located at the northeast corner of Arleta Avenue and Paxton Street, in the City of Los Angeles.

The City has submitted an application to the State Department of Parks and Recreation for Urban Park Act of 2001 Grant funds, to construct recreational facilities within Pacoima Diversion, Parcel 35. The application requires the City to have adequate site control in the property to be improved. The deadline to provide the State with an agreement evidencing site control is April 16, 2004. The City and District are making minor modifications to the Use Agreement; however, the Use Agreement will be substantially in the same form as enclosed herein.

Implementation of Strategic Plan Goals

This action is consistent with the Strategic Plan Goal of Service Excellence, as it may provide benefits to the residents of the County in the form of enhanced recreational facilities and aesthetics.

FISCAL IMPACT/FINANCING

There will be no monetary consideration paid for the Use Agreement. The Los Angeles County Flood Control Act provides for District property to be used for recreational purposes.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Use Agreement is for 25 years. The City proposes to construct a recreational facility, which may include sports fields, picnic benches, a playground, and landscaping. The City will be responsible for operating and maintaining Parcel 35 and its recreational facilities during the term of the Use Agreement.

The Use Agreement will be reviewed and approved by County Counsel as to form prior to presentation to your Board for execution.

ENVIRONMENTAL DOCUMENTATION

This Use Agreement is categorically exempt, as specified in Section 15332 of State CEQA Guidelines.

The Honorable Board of Supervisors
April 1, 2004
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IMPACT ON CURRENT SERVICES (OR PROJECTS)

None.

CONCLUSION

This action is in the District's interest. Upon presentation by Public Works, please have the Chairman sign three originals of the Use Agreement and have them acknowledged by the Executive Officer of the Board of Supervisors. Please return two originals to this office, retaining one for your files.

One approved copy of this letter is requested.

Respectfully submitted,

JAMES A. NOYES
Director of Public Works

JT:fr
P6/BL Pacoima.doc

Enc.

cc: Auditor-Controller (Accounting Division - Asset Management)
Chief Administrative Office
County Counsel

AGREEMENT NO. _____
PACOIMA DIVERSION
PARCEL 35
THOMAS GUIDE NO. 502-A3
THIRD DISTRICT
R/W MAP NO. 148-RW-4.1

USE AGREEMENT

This Use Agreement, entered into on _____, 2004, by and between the

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT,
a body corporate and politic,

herein referred to as "DISTRICT"

and

CITY OF LOS ANGELES
a municipal corporation

herein referred to as "USER"

WITNESSETH

WHEREAS, the DISTRICT owns in fee that portion of Pacoima Diversion located at the northeast corner of Arleta Avenue and Paxton Street and west of Sharp Avenue, in the City of Los Angeles, State of California; and

WHEREAS, the USER desires to construct, operate and maintain improvements for recreational purposes that may include baseball and soccer fields, picnic area, playgrounds, and appurtenant facilities, hereinafter referred to as "RECREATIONAL FACILITY" over a portion of the DISTRICT'S fee property as indicated above; and

WHEREAS, the DISTRICT, while performing the primary function of flood control, watershed management, and water conservation, is willing to cooperate where feasible with the USER in the USER'S development of a RECREATIONAL FACILITY over Pacoima Diversion located at the northeast corner of Arleta Avenue and Paxton Street and west of Sharp Avenue in the City of Los Angeles, as more particularly shown cross-hachured on Exhibit "A", attached hereto and made a part hereof, hereafter referred to as PREMISES; and

WHEREAS, the DISTRICT and USER desire to enter into this Use Agreement to establish the construction, operation, maintenance, and financial

obligations of each party concerning the construction and operation of the RECREATIONAL FACILITY in the event that funding is secured, and that USER'S plans are approved and permit requirements are met, including those under the California Environmental Quality Act; and

WHEREAS, the DISTRICT and USER have the understanding that this Use Agreement will be used by the USER to secure funding for the RECREATIONAL FACILITY.

NOW, THEREFORE, in consideration of the promises and faithful performance by USER and DISTRICT of mutual covenants herein contained, for the period of time herein set forth, the DISTRICT and USER hereto mutually agree as follows:

SECTION I

USER AGREES:

1. In the event USER decides to construct and operate a RECREATIONAL FACILITY on the PREMISES, to bear all costs in preparing plans and specifications and in constructing the RECREATIONAL FACILITY and to bear all other costs of any nature whatsoever which are necessary for the USER'S use of the PREMISES.
2. To obtain prior written approval of the plans for the proposed development of the PREMISES and RECREATIONAL FACILITY from the DISTRICT'S Chief Engineer.
3. To obtain approval of the plans and specifications for construction of the RECREATIONAL FACILITY in the form of a no-fee permit from DISTRICT'S Construction Division, Subdivision and Permits Unit, prior to any construction. USER shall secure DISTRICT'S prior written approval as set forth herein and revise the permit for any changes made to the approved plans and specifications.
4. To fence the PREMISES from DISTRICT'S remaining, adjoining property, and to bear all costs for the installation, operation, and maintenance of all improvements including but not limited to fencing, landscaping and its irrigation system constructed or placed on the PREMISES by USER pursuant to this Use Agreement.
5. To provide DISTRICT with approved As-Built plans within thirty (30) days from the Notice of Completion, as executed by the

Head of Permits and Subdivisions Section, Construction Division,
County of Los Angeles Department of Public Works.

6. To be responsible for operating and maintaining the PREMISES and RECREATIONAL FACILITY and not to permit any trash or rubbish to accumulate or commit to allow waste to or on the PREMISES and RECREATIONAL FACILITY or to operate the RECREATIONAL FACILITY in violation of any laws or ordinances. USER shall maintain and clean the PREMISES and RECREATIONAL FACILITY to a standard not less than it maintains and cleans similar properties in the region.
7. To remove graffiti from the PREMISES and RECREATIONAL FACILITY surface and from any walk, fences, and signs that are immediately adjacent to the PREMISES.
8. If property of DISTRICT located on PREMISES and on adjoining land is damaged by USER or by any person entering the PREMISES with the consent of the USER, either expressed or implied, USER shall replace or repair the damaged property within a reasonable time to the satisfaction of the DISTRICT or compensate the DISTRICT for the damage within ninety (90) days of billing.
9. All RECREATIONAL FACILITY improvements installed by USER will be removed by USER at DISTRICT'S discretion, at the termination of this Agreement. All costs for the removal shall be borne by USER. At the expiration or earlier termination of this Use Agreement, USER shall at its own expense restore the PREMISES to the reasonable satisfaction of the DISTRICT to a condition similar to that which existed at the Commencement Date (defined in Section III, subsection 8), reasonable wear and tear excepted. If USER fails to remove improvements within thirty (30) days after receipt of written notice by DISTRICT, DISTRICT may remove the improvements itself and CITY agrees to reimburse DISTRICT for any and all expense incurred.
10. To close all gates and take all action necessary to secure the PREMISES in the event USER abandons its operation and maintenance of the PREMISES or in the event of an emergency. In the event USER secures the PREMISES due to abandonment of its operation and maintenance or due to emergency, USER shall provide written notice as soon as is reasonably practicable that USER has secured the PREMISES.

11. USER agrees to perform any required modifications or to relocate or to remove any improvements within the PREMISES upon receipt of written notice by DISTRICT if, in the sole opinion of the DISTRICT, it is reasonably determined that USER'S improvements interfere with DISTRICT'S primary function of flood control, watershed management or water conservation purposes.
12. Without limiting USER'S indemnification of the DISTRICT, both parties acknowledge that the USER is self-insured for General Liability and permissively self-insured for Worker's Compensation. At minimum, USER shall maintain coverage in the amounts equivalent to the following commercial insurance coverage:
 - Coverage for general liability and property damage with a combined single limit liability in the amount of not less than FIVE MILLION DOLLARS (\$5,000,000) per occurrence.
 - Worker's Compensation coverage in such amount as will fully comply with the laws of the State of California and that shall indemnify, insure and provide legal defense for both the DISTRICT and USER against any loss, claim or damage arising from any injuries or occupation diseases occurring to any worker employed by or any person retained by USER in the course of carrying out the work or services contemplated in this Agreement.
 - In the event USER procures commercial insurance policies for the PREMISES, the County of Los Angeles and Los Angeles County Flood Control District, its governing board, officers, agents, contractors, and employees shall be named as Additional Insured on all policies of liability insurance. USER shall furnish to DISTRICT a Certificate of Insurance evidencing USER's insurance coverage no later than ten (10) working days after execution of the Agreement, but before USER takes possession of the PREMISES. Upon renewal of said policy, USER shall furnish to DISTRICT a Certificate evidencing USER's continued insurance coverage as required herein.
 - The DISTRICT may accept, should USER elect to provide, a Certificate of Self-Insurance. The limits of such self-insurance coverage shall meet or exceed those stated herein. The Los Angeles County Flood Control District, the County of Los Angeles and their governing Board, officers, agents and employees shall be named as additional insureds.

13. USER shall have the right to cancel this Use Agreement by giving the DISTRICT at least sixty (60) days prior written notice.

SECTION II

DISTRICT AGREES:

1. To review plans and specifications for the RECREATONAL FACILITY improvements and notify USER of its approval.
2. To grant USER permission to use the PREMISES for the recreational purposes stated herein.
3. To inspect the PREMISES for compliance with approved plans and specifications.

SECTION III

IT IS MUTUALLY UNDERSTOOD AND AGREED:

1. USER and DISTRICT shall have no financial obligation to each other under this Use Agreement, except as herein expressly provided.
2. Use of the PREMISES shall be subordinate to the basic flood control, watershed management and water conservation purpose of the area as determined by the DISTRICT'S Chief Engineer and shall in no way conflict with this purpose. The DISTRICT reserves the right to suspend this Use Agreement should, in its opinion, there develop a substantial incompatibility between the USER'S permitted use herein and the DISTRICT'S uses for flood control, watershed management, water conservation, utility or transportation purposes arising from any cause whatsoever. It is understood and agreed that DISTRICT may enter onto the PREMISES and/or temporarily suspend this Use Agreement for flood control, watershed management and water conservation purposes, without notice to USER, in order to allow the performance by DISTRICT, its officers, agents, invitees, and employees of emergency services work necessary to protect life, property, or the PREMISES from impending fire, fire damage, earthquake damage, flood damage, road damage, or any other condition the DISTRICT determines to be an emergency. In such

cases of emergencies, as the DISTRICT will solely determine, the PREMISES could be subject to temporary closure.

3. Indemnification

A. Except to the extent caused by DISTRICT'S sole negligence during the term of this Use Agreement, DISTRICT shall not be liable for any loss, injury, death or property damage, and USER agrees to indemnify, defend and pay for any expenses, defense costs and legal fees and to hold the DISTRICT harmless against any claims of any nature whatsoever arising out of USER'S construction, operation or maintenance of the PREMISES and/or the RECREATIONAL FACILITY. For purposes of this provision, "DISTRICT" shall include the Los Angeles County Flood Control District, the County of Los Angeles and their governing boards, officers, agents and employees.

B. Except to the extent caused by USER'S sole negligence, USER shall not be liable for any loss, injury, death or property damage, and DISTRICT agrees to pay for any expenses, defense costs and legal fees and to hold USER harmless against any claims of any nature whatsoever arising solely out of the acts or omissions of DISTRICT or others on the PREMISES. For purposes of this provision, "USER" shall include the City of Los Angeles and its governing boards, officers, agents and employees.

C. The parties expressly recognize and intend that in consideration of this Use Agreement, which is solely for USER'S benefit, that DISTRICT is not to incur any liability whatsoever, for any injury, death, or property damage arising from any use of the PREMISES, and/or the RECREATIONAL FACILITY by persons who gain entry through openings or areas provided for USER'S use even if the injury, death or damage is caused by DISTRICT'S negligence, and Subsection 3B of this Agreement shall not apply. Should any person or persons enter the DISTRICT'S right of way in the vicinity of the PREMISES, and/or RECREATIONAL FACILITIES, it shall be presumed, unless proven otherwise by USER, that such person or persons gained entry through openings provided by USER'S use.

4. USER waives all rights to damages and releases DISTRICT of all liability for any loss, cost or expense USER may sustain as a result of damage to or destruction of its facilities on or adjacent to the PREMISES caused by DISTRICT'S flood control, watershed management or water conservation facilities and operations.

5. DISTRICT, its Board, any authorized officer, engineer, employee, contractor, through its agents or representatives, shall have full right and authority to enter in and upon the PREMISES at any and all reasonable times during the term of this Use Agreement, all without interference or hindrance by USER, its agents, officers, contractors, employees or representatives for the purpose of inspecting the same and to serve or post any notice required or permitted by law for the protection of any right or interest of the DISTRICT.
6. Except as to fuels, lubricants and products associated with motorized vehicles and/or equipment and/or gardening or maintenance-related substances, USER shall not cause or allow the presence, use, storage, or disposal of any hazardous substances on or about the PREMISES without the prior written consent of the DISTRICT. In the event of spillage, leakage or escape of any hazardous substance onto the PREMISES, USER shall immediately notify DISTRICT by calling (800) 675-4357. If the spillage, leakage or escape was caused by USER, USER shall promptly remove any such substance from the PREMISES to the DISTRICT'S satisfaction. In addition to removing any of USER'S hazardous substances, USER shall be liable for and reimburse DISTRICT for any and all cost and expenses that DISTRICT may incur or suffer. Such responsibility shall include cost or expenses as DISTRICT may incur by reason of Federal, State, local or other authoritative agency's laws and regulations. Notwithstanding the foregoing, USER shall have no responsibility regarding any spill, leak or escape associated with any of DISTRICT'S tenants, licensees or easement holders.
7. USER shall be the lead agency and will not use the PREMISES until the necessary environmental clearances and any other permits as required by law are obtained.
8. The term of this Use Agreement shall be for twenty-five (25) years, ("Initial Term") unless funding to construct operate and maintain the RECREATIONAL FACILITY is not obtained within five (5) years from the date this Use Agreement is fully executed. In that event, this Use Agreement will automatically terminate at the end of the five (5) year period. Otherwise, the term shall commence thirty (30) days from the date the DISTRICT receives notice from USER that funding was approved for this project.
9. Any amendment to this Use Agreement shall be executed on the part of the DISTRICT by the DISTRICT'S Chief Engineer or his/her designee.

10. USER shall have the right to renew this Use Agreement beyond the Initial Term on a year-to-year basis for a period not to exceed twenty (20) years, provided a written request from the USER is received by the DISTRICT no earlier than twelve (12) months or later than six (6) months prior to the end of the Initial Term and upon written approval of DISTRICT. The DISTRICT shall have the right to cancel this Use Agreement for any reason, after the Initial Term, upon thirty (30) days written notice to USER.
11. Except as otherwise stated in this Use Agreement, this Use Agreement can only be cancelled by USER as provided herein or terminated by DISTRICT for breach of any term or provision in this Use Agreement., provided, however, that a failure to perform any provision, covenant or condition of this Use Agreement shall not be deemed a breach if cured within thirty (30) days of written notice of breach by DISTRICT. The DISTRICT shall notify USER, in writing, identifying the breach, and provide USER thirty (30) days to cure the breach.
12. USER is aware and understands that Chevron U.S.A., Inc., ("Chevron") is the current Lessee on and under a portion of the PREMISES as depicted herein on Exhibit "A", authorized under Lease No. 42356. To the extent that Chevron has rights under Lease No. 42356 to approve of USER'S plans and specifications for the RECREATIONAL FACILITY, the DISTRICT shall seek said approval.
13. Notices

All notices herein that are to be given or that may be given by either party shall be in writing and shall be deemed to have been given three business days after deposit in the U.S. Mail addressed as follows:

To DISTRICT:

Mapping and Property Management Division
L. A. County Flood Control District
Department of Public Works
900 South Fremont Avenue, 10th floor
Alhambra, CA 91803-1331

[tel.: (626) 458-7065 or (626) 458-7072; fax (626) 289-3618]
For Emergencies, contact (626) 458-HELP (4357)

To USER:

Park Maintenance Supervisor or District Supervisor
Department of Recreation and Parks
North Valley District
6335 Woodley Avenue
Van Nuys, CA 91406

[tel.: (818) 368-8343 or (818) 756-8060; fax (818) 908-9786]

ACKNOWLEDGEMENTS

IN WITNESS WHEREOF the said LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, by order of its Board of Supervisors, has caused the Use Agreement to be subscribed by the Chairman of the Board and the seal of the said DISTRICT to be affixed hereto and attested by its Executive Officer of the Board of Supervisors, and authorized representatives of the USER have hereunto subscribed their names, the day and year first above written.

“DISTRICT”

LOS ANGELES COUNTY FLOOD CONTROL
DISTRICT,
a body corporate and politic

By: _____
Chairman, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS, Executive Officer
of the Board of Supervisors
of the County of Los Angeles

By: _____

APPROVED AS TO FORM:
Lloyd W. Pellman, County Counsel

By: _____

Date: _____

Approved as to Form and Legality:

Rockard J. Delgadillo, City Attorney

By: _____
Kevin T. Ryan, Deputy City Attorney

Date: _____

“USER”

CITY OF LOS ANGELES,
a municipal corporation,
acting by and through its
Board of Recreation and
Park Commissioners with
authority delegated to the
General Manager (Council
File No. 03-2608).

By: _____
Jon Kirk Mukri, General
Manager

Date: _____

Revised 3/30/04